IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (WCA) No.464 with FAO Nos. 465, 466, 467, 468 and 469 of 2003.

Judgement reserved on: 22.05.2007.
Date of decision: June 25, 2007

(For title, please see pages (i) and (ii))

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants:

(see pages –(i) & (ii).

For the respondents:

Kuldip Singh, Judge

This judgment shall dispose of FAO Nos.464, 465, 466, 467, 468 and 469 of 2003. All these appeals have arisen out of common order dated 9.7.2003 passed by Commissioner, under Workmen's Compensation Act, Jhakri in FA No.5 of 2001, FA No.3 of 2001, NFA No.28 of 2001, FA No.6 of 2001, NFA No.29 of 2001 and FA No.4 of 2001 respectively. FA No.3 of 2001, FA No.4 of 2001, FA No.5 of 2001, FA No.6 of 2001 and NFA No.28 of 2001 and NFA

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?***

No.29 of 2001 were filed by the petitioners / claimants, claiming compensation under the Workmen's Compensation Act, 1923 (for short' the WC Act'). In FA No.3 of 2001, FA No.4 of 2001, FA No.5 of 2001 and FA No.6 of 2001 compensation was claimed by the dependants of deceased workmen, whereas in NFA No.28 of 2001 and NFA No.29 of 2001 the claim petitions were filed by the injured workmen. The Commissioner in the impugned order has held New India Assurance Company to pay the entire compensation along with interest to the claimants with a direction to the insurer to deposit whole of the compensation amount Rs.19,69,930/- before the Commissioner within one month from the receipt of the order. The New India Assurance Company, in these circumstances, has filed the above appeals against the impugned order.

2. The brief facts in each appeal, are as follows:-

(i) ***FAO No.464 of 2003***

3. Smt.Usha Devi, widow and Kumari Anjana daughter of Karam Chand, filed claim petition on the grounds that Karam Chand, aged 36 years was employed with employer ANS Earthmovers as driver on truck No.HP-12-9929 on Rs.3850/- per month salary, he received fatal injuries on the night intervening 29/30.3.2001 during the course of his employment with the employer. It has been alleged that on 29.3.2001, work continued late, as such Karam Chand along with other drivers and conductors came to the residence, which was provided by the employer for staying/retiring. On the following day, the

work was to start early. At about 2 A.M. accident took place due to massive land slide in which big boulders fell on the residence provided to workers by employer. In the accident Karam Chand received fatal injuries and he died on the same day. It has been alleged that New India Assurance Company, being the insurer of the truck, is liable to pay the compensation. The claimants have claimed statutory compensation, 18% interest and 50% penalty both from the employer and the insurer.

4. The employer M/s.ANS Earthmovers contested the claim by filing a reply in which preliminary objections have been taken that injuries were not sustained by the deceased during the course of employment. The employer is not at all liable to pay compensation to the claimants. The injuries were sustained by an act of God and not during the course of employment. In any case, liability to pay compensation is of M/s New India Assurance with which truck No.HP-12-9929 was insured. On merits, employment of deceased as driver on truck No.HP-12-9929 with employer M/s ANS Earthmovers was admitted. The accident took place due to land slide, which was triggered by rains. The claimants are not entitled to compensation. The petition is bad for misjoinder of necessary parties.

5. The insurer contested the claim by filing reply in which preliminary objections have been taken that injuries leading to the death of the deceased were not caused during the course of the employment of the deceased. The petition is bad for misjoinder of

insurer. There is collusion between claimants and employer. The insurer is not liable to pay any claim. The claim is not covered by the insurance policy. There was no relationship of employer and employee in between M/s ANS Earthmovers and the deceased. On merits, it has been submitted that accident appears to be an act of God. The insurer is not liable to pay any compensation. The accident appears to be outside the employment.

(ii) FAO No.465 of 2003:

6. Smt.Surto Devi, mother and Karam Chand father of Gian Chand, filed claim petition on the grounds that Gian Chand, aged 37 years was employed with employer ANS Earthmovers as driver on truck No.HP-12-9929 on Rs.3500/- per month salary, he received fatal injuries on the night intervening 29/30.3.2001 during the course of his employment with the employer. It has been alleged that on 29.3.2001, work continued late, as such Gian Chand along with other drivers and conductors came to the residence, which was provided by the employer for staying/retiring. On the following day, the work was to start early. At about 2 A.M. accident took place due to massive land slide in which big boulders fell on the residence provided to workers by employer. In the accident Gian Chand received fatal injuries and he died on the same day. It has been alleged that New India Assurance Company, being the insurer of the truck, is liable to pay the compensation. The claimants have claimed statutory compensation, 18% interest and 50% penalty both from the employer and the insurer.

7. The employer M/s ANS Earthmovers contested the claim by filing a reply in which preliminary objections have been taken that workman did not suffer injuries during the course of employment. The employer is not at all liable to pay compensation to the claimants. The injuries were sustained by an act of God and not during the course of employment. In any case, liability to pay compensation is of M/s New India Assurance with which truck No.HP-12-9929 was insured. On merits, employment of deceased as driver on truck No.HP-12-9929 with employer M/s ANS Earthmovers was admitted. The accident took place due to land slide, which was triggered by rains. The claimants are not entitled to compensation. The petition is bad for misjoinder of necessary parties.

8. The insurer contested the claim by filing reply in which preliminary objections have been taken that injuries leading to the death of the deceased were not caused during the course of the employment of the deceased. The petition is bad for misjoinder of insurer. There is collusion between claimants and employer. The insurer is not liable to pay any claim. The claim is not covered by the insurance policy. There was no relationship of employer and employee in between M/s ANS Earthmovers and the deceased. On merits, it has been submitted that accident appears to be an act of God. The insurer is not liable to pay any compensation. The accident appears to be outside the employment.

(iii) ***FAO No.466 of 2003:***

9. Ashok Kumar was employed as mechanic by employer ANS Earthmovers as driver on truck No.HP-12-9929, he allegedly received injuries during the course of his employment with the employer on the night intervening 29/30.3.2001. It has been alleged that at about 2 A.M. accident took place due to massive land slide in which big boulders fell on the residence of the workers. In the accident Ashok Kumar claimant received injuries, which rendered him 100% disable. At the time of accident, he was 32 years of age and was being paid Rs.4000/- per month wages. He has claimed statutory compensation, 18% interest and 50% penalty both from the employer as well as the insurer.

10. The employer M/s ANS Earthmovers contested the claim by filing a reply in which preliminary objections have been taken that injuries were not sustained during the course of employment by the workman. The employer is not at all liable to pay compensation to the claimant. The injuries were sustained by an act of God and not during the course of employment. In any case, liability to pay compensation is of M/s.New India Assurance with which truck No.HP-12-9929 was insured. On merits, employment of injured as helper on truck No.HP-12-9929 with employer M/s.ANS Earthmovers was admitted. The accident took place due to land slide, which was triggered by rains. The claimants are not entitled to compensation. The petition is bad for misjoinder of necessary parties.

11. The insurer contested the claim by filing reply in which preliminary objections that injuries were caused during the course of the employment of the injured. The petition is bad for misjoinder of insurer. There is collusion between claimants and employer. The insurer is not liable to pay any claim. The claim is not covered by the insurance policy. There was no relationship of employer and employee in between M/s ANS Earthmovers and the injured. On merits, it has been submitted that accident appears to be an act of God. The insurer is not liable to pay any compensation. The accident appears to be outside the employment.

(iv) <u>FAO No.467 of 2003:</u>

12. Smt.Pammi Devi, widow, Kumari Indu Bala, Raju, Bhagu, daughter and sons of Yashpal Singh, filed claim petition on the grounds that Yashpal Singh, aged 38 years was employed with employer ANS Earthmovers as driver on truck No.HP-12-9919 on Rs.3750/- per month salary, he received fatal injuries on the night intervening 29/30.3.2001 during the course of his employment with the employer. It has been alleged that on 29.3.2001, work continued late, as such Yashpal Singh along with other drivers and conductors came to the residence, which was provided by the employer for staying/retiring. On the following day, the work was to start early. At about 2 A.M. accident took place due to massive land slide in which big boulders fell on the residence provided to workers by employer. In the accident, Yashpal Singh claimant received fatal injuries and he

died on the same day. It has been alleged that New India Assurance Company, being the insurer of the truck, is liable to pay the compensation. The claimants have claimed statutory compensation, 18% interest and 50% penalty both from the employer and the insurer.

13. The employer M/s ANS Earthmovers contested the claim by filing a reply in which preliminary objections have been taken that injuries were not sustained by deceased during the course of employment. The employer is not at all liable to pay compensation to the claimants. The injuries were sustained by an act of God and not during the course of employment. In any case, liability to pay compensation is of M/s New India Assurance with which truck No.HP-12-9919 was insured. On merits, employment of deceased as driver on truck No.HP-12-9919 with employer M/s ANS Earthmovers was admitted. The accident took place due to land slide, which was triggered by rains. The claimants are not entitled to compensation. The petition is bad for misjoinder of necessary parties.

14. The insurer contested the claim by filing reply in which preliminary objections that injuries leading to the death of the deceased were not caused during the course of the employment of the deceased. The petition is bad for misjoinder of insurer. There is collusion between claimants and employer. The insurer is not liable to pay any claim. The claim is not covered by the insurance policy. There was no relationship of employer and employee in between M/s ANS Earthmovers and the deceased. On merits, it has been

submitted that accident appears to be an act of God. The insurer is not liable to pay any compensation. The accident appears to be outside the employment.

(v) FAO No.468 of 2003:

15. Ashok Kumar was employed as helper by employer ANS Earthmovers on truck No.HP-12-9919, he allegedly received injuries during the course of his employment with the employer on the night intervening 29/30.3.2001. It has been alleged that at about 2 A.M. accident took place due to massive land slide in which big boulders fell on the residence provided to the workers. Ashok Kumar claimant suffered injuries in the accident, which rendered him 100% disable. At the time of accident, he was 20 years of age and was being paid Rs.1800/- per month wages. He has claimed statutory compensation, 18% interest and 50% penalty both from the employer as well as the insurer.

16. The employer M/s ANS Earthmovers contested the claim by filing a reply in which preliminary objections have been taken that injuries were not sustained during the course of employment by the workman. The employer is not at all liable to pay compensation to the claimant. The injuries were sustained by an act of God and not during the course of employment. In any case, liability to pay compensation is of M/s New India Assurance with which truck No.HP-12-9919 was insured. On merits, employment of injured as helper on truck No.HP-12-9919 with employer M/s ANS Earthmovers was admitted. The

accident took place due to land slide, which was triggered by rains. The claimants are not entitled to compensation. The petition is bad for misjoinder of necessary parties.

17. The insurer contested the claim by filing reply in which preliminary objections that injuries were not caused during the course of the employment of the injured. The petition is bad for misjoinder of insurer. There is collusion between claimants and employer. The insurer is not liable to pay any claim. The claim is not covered by the insurance policy. There was no relationship of employer and employee in between M/s ANS Earthmovers and the injured. On merits, it has been submitted that accident appears to be an act of God. The insurer is not liable to pay any compensation. The accident appears to be outside the employment.

(vi) FAO No.469 of 2003:

18. Hoshiar Singh Tyagi father and Smt.Tilotima Devi mother of Anil Tyagi, filed claim petition on the grounds that Anil Tyagi, aged 19 years was employed with employer ANS Earthmovers as Helper on truck No.HP-12-9939 on Rs.2400/- per month salary, he received fatal injuries on the night intervening 29/30.3.2001 during the course of his employment with the employer. It has been alleged that on 29.3.2001, work continued late, as such Anil Tyagi, along with other drivers and conductors came to the residence, which was provided by the employer for staying/retiring. On the following day, the work was to start early. At about 2 A.M. accident took place due to massive land

slide in which big boulders fell on the residence provided to workers by employer. In the accident, Anil Tyagi received fatal injuries and he died on the same day. It has been alleged that New India Assurance Company, being the insurer of the truck, is liable to pay the compensation. The claimants have claimed statutory compensation, 18% interest and 50% penalty both from the employer and the insurer.

19. The employer M/s ANS Earthmovers contested the claim by filing a reply in which preliminary objections have been taken that injuries were not sustained by the deceased during the course of employment. The employer is not at all liable to pay compensation to the claimants. The injuries were sustained by an act of God and not during the course of employment. In any case, liability to pay compensation is of M/s New India Assurance with which truck No.HP-12-9939 was insured. On merits, employment of deceased as Helper on truck No.HP-12-9939 with employer M/s ANS Earthmovers was admitted. The accident took place due to land slide, which was triggered by rains. The claimants are not entitled to compensation. The petition is bad for misjoinder of necessary parties.

20. The insurer contested the claim by filing reply in which preliminary objections that injuries leading to the death of the deceased were not caused during the course of the employment of the deceased. The petition is bad for misjoinder of insurer. There is collusion between claimants and employer. The insurer is not liable to pay any claim. The claim is not covered by the insurance policy.

There was no relationship of employer and employee in between M/s ANS Earthmovers and the deceased. On merits, it has been submitted that accident appears to be an act of God. The insurer is not liable to pay any compensation. The accident appears to be outside the employment.

21. The Commissioner, vide order dated 9.7.2001, in FA Nos. 5, 3, 6, 4 of 2001, NFA No.28 and 29 of 2001, has allowed compensation along with interest as follows:-

Sr. No.	***Case No.***	***Compensation awarded***	***Simple interest w.e.f. 1.5.2001 to the date of deposit @ 12% per annum.***	***Total amount.***
1.	FA No.3 of 2001	Rs.3,36,245/-	Rs.91,671/-	Rs.4,27,916/-
2.	FA No.4 of 2001	Rs.2,70,264/-	Rs.73,682/-	Rs.3,43,964/-
3.	FA No.5 of 2001	Rs.3,74,682/-	Rs.1,02,150/-	Rs.4,76,832/-
4.	FA No.6 of 2001	Rs.3,55,425/-	Rs.96,900/-	Rs.4,52,325/-
5.	NFA No.28 of 2001	Rs.1,86,854/-	Rs.50,942/-	Rs.2,37,796/-
6.	NFA No.29 of 2001	Rs.24,449/-	Rs.6666/-	Rs.31,115/-

22. The New India Assurance Company has filed above appeals against the impugned award. All appeals, have been admitted on following substantial questions of law:-

(i) Whether in view of the admitted fact that the policies issued by the appellant were only Act Policies and the risk covered was under the Workmen Compensation Act of the persons engaged in driving the vehicle, the company

could be fastened with liability in case of mechanics and helpers also?

(ii) Whether in view of the fact that Gian Chand driver, Anil Tyagi helper, Karam Chand driver, Yash Pal who died on the spot and Ashok Kumar mechanic, and Ashok Kumar helper who received injuries while sleeping in the tin-shed on which boulders fell as a result of heavy rains were entitled to compensation when the vehicles insured were not involved in the accident?

(iii) Whether in the facts and circumstances of the case the accident occurred during the course of employment and the appellant could be fastened with the liability to pay compensation and interest as awarded?

(iv) Whether the compensation awarded is not in accordance with the principles of Workmen's Compensation Act?

23. I have heard the learned counsel for the parties and have also gone through the record.

24. The learned counsel for the insurer has submitted that the deceased or the injured did not receive the injuries when the trucks were in use. The insurance policies Ex. R-1 to Ex.R-6 of the trucks cover the risk under the Motor Vehicles Act, 1988 (for short 'MV Act') and not under the WC Act. The insurer is not liable to pay any compensation. The learned

counsel for the respondents supported the impugned award, whereby New India Assurance Company has been directed to pay the compensation.

Substantial Questions of Law No.1 to 4.

25. The substantial questions of law No.1 to 4 are being disposed of collectively as the same are interconnected.

26. The case of the claimants in substance is common in all cases, therefore, facts in FAO No.464 of 2003, are being referred to in order to appreciate the legal controversy. The pleaded case is that Karam Chand, driver was employed by employer ANS Earthmovers on truck No. HP-12-9929. On 29.3.2001, the work continued late, as such, Karam Chand along with others returned to resting place, which was provided by the employer for staying/retiring. Karam Chand was to start the work early on the following day. When Karam Chand was sleeping or taking rest at the residence provided by the employer, at about 2.00 a.m. on 30.3.2001 all of a sudden a massive land slide took place, he received fatal injuries and died on the spot. The claimants have submitted that accident took place during the course of employment.

27. Counsel for the insurer has submitted that the policies of the trucks under MV Act cannot be used to cover the risk under the WC Act, except to the limited extent as provided under the MV Act. He has submitted that insurer has not covered the workman of employer by way of separate policy under the WC Act. The workman was sleeping, taking rest at the residence, he was not doing any work on the truck. In the facts and circumstances of the case, job, duty of the workman cannot be extended to the place of his rest. The workman did not receive injuries in an accident involving insured truck.

28. PW 1 Jagdev brother of Karam Chand has stated that on 29.3.2001, his brother and other drivers slept in the godown of the employer. He came to know that due to rain boulders fell on the residence of the employer, as a result of which his brother and others died. In his statement, he nowhere stated that at the time of the accident, Karam Chand was discharging his duty on the truck.

29. PW 2 Ashok Kumar has stated that he was working as mechanic with the employer and he has stated that on 29.3.2001, he was repairing the truck when he was hit by the boulders and was injured. In his claim petition, he has nowhere pleaded that he was repairing the truck when he was hit by the boulders. On the contrary, he has pleaded that accident took place, when due to land slide massive boulders fell on the residence of the workers, in which he was injured. He has made improvement in his statement, therefore, he cannot be believed that deceased or injured workmen were discharging their duties on their trucks at the time of the accident. It is the pleaded case of the claimants that deceased and injured workmen received injuries when they were sleeping and taking rest in their residence provided by the employer.

30. RW 1 G.S. Mathur has deposed that he was manager in M/s ANS Construction since January 2000. M/s ANS Construction had taken work from Nathpa Jhakri Power Corporation for construction of road. M/s. ANS Construction for transportation had taken some trucks with drivers, conductors and mechanics for transportation of material. M/s ANS Earthmovers used to pay wags to those drivers and conductors etc. On 30.3.2001 he received telephonic message that some drivers and conductors were injured and others had died due to landslide. They were

staying at a distance of 2 Kilometers from the place of work. RW 2 Jitender Mohan, Manager M/s Earthmovers has stated that M/s ANS Earthmovers had given these trucks and machines to M/s ANS Construction along with drivers and conductors. M/s ANS Earthmovers used to pay the wages of these drivers and conductors. The trucks were insured with New India Assurance Company. The accident had not taken place during the course of employment rather it took when workers were sleeping. RW 3 Satish Kumar, Senior Assistant, New India Assurance Company has proved Insurance policies Exts. R 1 to 6 of the trucks. He has stated that insured vehicles at the time of accident were not at the place of accident. The insurer has no information regarding claim of vehicles.

31. In the present case, the admitted case of the claimants is that deceased or injured workmen were staying/ resting in the residence provided by the employer. There is no worth believing evidence on record that the deceased/injured workmen were working on the truck when they were hit by the boulders in the land slide. The statement of Ashok Kumar, Mechanic is contrary to his pleaded case and, therefore, cannot be believed. The accident involving the trucks in question has not at all been proved.

32. The learned counsel for the insurer has also submitted that Section 167 of the MV Act gives an option to the claimant to file a petition either under the M.V. Act or under the WC Act. Once an option has been exercised then proceedings will be governed by that Act under which the claim petition has been filed. The insurance policies Exts. P-1 to 6 are under the M.V. Act and there is no policy under the WC Act. It has been

submitted that insurance policies Exts. P-1 to 6 have not been properly appreciated by the Commissioner.

33. The Hon'ble Supreme Court in **Gottumukkala Appala Narasimha Raju & ors. vs. National Insurance Co. Ltd. & anr.** [2007 ACJ 1025], has held as follows:-

> **"11. "The provisions of 1988 Act provide for a complete code. A contract of insurance is a contact between two parties. The 1988 Act mandates compulsory insurance of motor vehicles in terms of section 146 thereof. Compulsory insurance, therefore, has been provided under the 1988 Act and not under the 1923 Act. Statutory duty to indemnify the insured by the insurer arises only thereunder. Section 143 of the 1988 Act occurring in Chapter X thereof shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under the 1923 Act resulting from an accident of the nature referred to in sub-section (1) of section 140 and for the said purpose, the said provisions, shall with necessary modification be deemed to form part of that Act. Chapter X deals with certain categories of cases. A claim petition under Section 166 of the 1988 Act, however, comes under Chapter XII thereof. Applicability of the provisions of 1988 Act shall, therefore, be confined to Chapter X thereof for the purpose of a proceeding initiated under the 1923 Act."**

13. "A 'workman' with the meaning of the provisions of the 1923 Act would, therefore, be entitled to maintain an application for payment of compensation if, for a personal injury caused to him by accident arising out of or in case of his employment in which the employer shall be liable to pay compensation in accordance with the provisions of Chapter X. Chapter X of the 1988 Act, thus, is made applicable in relation to a claim which could have also been made under Section 3 of the 1923 Act. But, having regard to the fact that Section 143 of Chapter X makes a special provision, the same shall apply only to cases arising under the said Chapter and not under Chapter XI of the 1988 Act.

14. "The 1988 Act provides for mandatory insurance for the matters laid down under Section 147 of the Act and, thus, an award can be passed against an insurer. An insurer, having regard to sub-section (2) of Section 149 of the Act, would ordinarily have limited defence as provided for therein. The defence of an insurer in a proceeding under the 1923 Act would be unlimited and all the defences which are available to the employer would be available to it.

15. "Section 143 of the 1988 Act has a limited applicability so far as the provisions of the 1923 Act are concerned. Where a liability arises despite the fact that accident might have taken place without any fault of the driver of the vehicle and orders under control thereof, the insurer may have a liability, whereas under 1923 Act a 'workman' would be entitled to

compensation, even if no negligence is proved against the owner or the person in charge of the vehicle; but the applicability of Section 143 of the 1988 Act, therefore, cannot be extended to one made under Chapter XI thereof. In a case of this nature, provision of Section 167 of the 1988 Act would be of no significance."

16. The question in regard to the applicability of Section 167 of the 1988 Act fell for consideration in National Insurance Co. Ltd. V. Mastan, 2006 ACJ 528 (SC), wherein it was held;

"(22) Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the 1923 Act.

(23) The 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them by not both. Although there are

certain exceptions to the same rule but the same has no application in the instant case."

"(33) …… The exclusiveness of the jurisdiction of the Motor Accidents claims Tribunals is taken away by Section 167 of Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation act, can be enforced through the authorities under that Act, option in that behalf, being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation both under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 because of a motor vehicle accident has the choice of proceeding under either of the Acts before the concerned forum. By confining the claim to the authority or Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923. The emphasis in the Section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The

> **principle where, either of the two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute and he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter' [see R.V. Evans, (1854) 3 E & B 363] is fully incorporated in the scheme of section 167 of the Motor Vehicles Act, precluding the claimant who has invoked Workmen's Compensation Act from having resort to the provisions of Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognized in Section 167 of the Motor Vehicles Act."**
>
> **18. The learned counsel appearing on behalf of the appellants, therefore, in our opinion, was not correct in contending that all the pleas available in a proceeding under the 1988 Act shall proprio vigore be available in a proceeding under the provisions of 1923 Act."**

34. The claimants have exercised their option of claiming compensation under the WC Act. Therefore, they will have to prove their case within the parameters of WC Act. No policy covering deceased or injured workman under WC Act has been proved. The policies Exts.P-1 to 6 are under MV Act. The basis of claim under the MV Act is death or bodily injury to persons arising out of use of motor

vehicles or damage to any property of a third party. The claimants have failed to establish that deceased or injured workman received injuries in an accident involving insured trucks in question. The injuries were sustained by the workman when they were resting at their resting place which was 2 Kilometers from the place of their work. The involvement of the trucks in question directly or indirectly in the accident has not at all been proved. They were not working on the trucks and, therefore, insured is not liable to pay any compensation to the claimants. The Commissioner has wrongly held liable insurer to pay compensation in each case by way of impugned order. The impugned order against the insurer is set-aside. The employer has not assailed the impugned order. Accordingly, the substantial questions of law No.1 to 4 are decided in favour of the insurer and against the claimants.

35. No other point was urged.

36. The result of above discussion is that FAO Nos. 464, 465, 466, 467, 468 and 469 of 2003 are allowed, the impugned order against the insurer- New India Assurance Company is set-aside in each case. The employer M/s ANS Earthmovers shall remain bound by impugned order in each case, since it has not assailed the impugned order. No costs.

(Kuldip Singh)
Judge.

June 25, 2007
(Hem/soni/SKS)

(i)

1. ***FAO No.464 of 2003:***

New India Assurance Co. Ltd. … Appellant.

Versus

Smt.Usha Devi & Ors. …Respondents.

For the appellant: Mr.K.D.Sood, Advocae.

For the respondents: Mr.Debender Ghosh, Advocate for respondents No.1 and 2 & 2(a).
Mr.Ashwani K. Sharma, Advocate for respondent No.3.

2. ***FAO No.465 of 2003:***

New India Assurance Co. Ltd. …Appellant.

Versus

Surto Devi & Ors. …Respondents.

For the appellant: Mr.K.D.Sood, Advocae.

For the respondents: Mr.Debender Ghosh, Advocate for respondents No.1 and 2.
Mr.Ashwani K. Sharma, Advocate for respondent No.3.

3. ***FAO No.466 of 2003:***

New India Assurance Co. Ltd. …Appellant.

Versus

Ashok Kumar & Anr. …Respondents.

For the appellant: Mr.K.D.Sood, Advocae.

For the respondents: Mr.Debender Ghosh, Advocate for respondent No.1.
Mr.Ashwani K. Sharma, Advocate for respondent No.2.

(ii)

4. ***FAO No.467 of 2003:***

New India Assurance Co. Ltd. …Appellant.

Versus

Pammi Devi & Ors. …Respondents.

For the appellant: Mr.K.D.Sood, Advocae.

For the respondents: Mr.Debender Ghosh, Advocate for respondents No.1 to 4.
Mr.Ashwani K. Sharma, Advocate for respondent No.5.

5. FAO No.468 of 2003:

New India Assurance Co. Ltd. …Appellant.

Versus

Ashok Kumar & Ors. …Respondents.

For the appellant: Mr.K.D.Sood, Advocae.

For the respondents: Mr.Debender Ghosh, Advocate for respondent No.1.
Mr.Ashwani K. Sharma, Advocate for respondent No.2.

6. FAO No.469 of 2003:

New India Assurance Co. Ltd. …Appellant.

Versus

Hoshiar Singh Tyagi & Ors. …Respondents.

For the appellant: Mr.K.D.Sood, Advocae.

For the respondents: Mr.Debender Ghosh, Advocate for respondents No.1 and 2.
Mr.Ashwani K. Sharma, Advocate for respondent No.3.

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